

***United States Court of Appeals
for the Second Circuit***



APPENDIX

Docket No.

75-1341

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA

Appellee

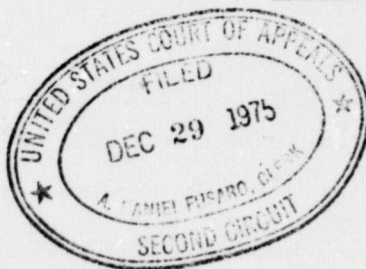
v.

STEVEN JOHN MURRAY

Appellant

Appeal from the United States District
Court for the District of Vermont

APPENDIX FOR THE UNITED STATES



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intends to call two witnesses, we ask the second witness be sequestered so as to not be influenced by the first.

MR. O'NEILL. They don't overlap. We can exclude them, but their testimony will not overlap.

THE COURT. Under the circumstances, it doesn't make any difference, does it, Mr. Sessions?

MR. SESSIONS. No, but I ask the assurance the testimony of the second witness will not cover any of the items the first witness is going to talk about.

MR. O'NEILL. They didn't observe the same facts together, your Honor.

THE COURT. I am not sure what you are telling me; sequester him.

MR. O'NEILL. Very well, your Honor.

MICHAEL LeCLAIR, Sworn

DIRECT EXAMINATION

Q (By Mr. O'Neill) May we have your name, sir?

A. Michael LeClair.

Q How are you employed?

A. I am a state police officer employed by the State of Vermont.

Q How long have you been so employed?

A. I am working on seven years now.

Q What, basically, are your duties as a state police officer?

A. I am a uniformed trooper, and I am required to do all

phases of law enforcement.

Q Approximately what amount of your time is involved in criminal investigation as opposed to traffic work?

A. I direct approximately 70-75 per cent of my time to criminal work.

Q Directing your attention to December, 1974 and January of 1975, were you with the Vermont State Police at that time?

A. Yes, sir, I was.

Q Were you aware of a series of five or six break-ins in the general Middlebury area?

A. Yes, sir.

Q Directing your attention to January 21st, as of that date did you have any suspects in mind in connection with those breaks?

A. Yes, sir, I did.

Q Who were the suspects?

A. The suspects were one Joseph Gibeault and Steven John Murray.

Q Now as of January 21st, had you spoken to an individual who was, might be considered by you to be an informant with respect to these two individuals?

A. Yes, sir, I talked to several people at that point.

Q And, had one of these individuals, one of the persons you had spoken with, given you any information with respect to

possession by these two individuals of glassware or anything of that nature?

A. Yes, sir.

Q What was the nature of the information you were provided with?

A. The information that I had at the time was that subjects Gibeault and Murray were in possession of some very expensive glassware items--vases, dishes and so on.

Q Were you aware of any breakins where anything of this nature had been taken?

A. At that point, no, I wasn't.

Q Did there come a time following the time you were given this information when you were aware of this?

A. Yes, sir.

Q Would you explain to us what that information consisted of?

A. After I obtained the information from this informant, I talked with other defendants being the Middlebury Police Department and other officers that I work with, and at that time I was advised that there was a break and entering into the Chester Way home where this type of property was stolen and large quantities of very expensive glassware and dishes and so on.

Q Were you informed as to how the material had been taken from the Way household?

A. Yes, sir, I was. It was determined that the property was being removed by pillowcases.

Q Now directing your attention to approximately January 14, 1975, did you have occasion to investigate the break-in at the Russell Nason residence?

A. Yes, I did.

Q Where is that located?

A. Located in the Town of Weybridge on what they call Perkins Road.

Q What was the nature of the items taken at that time?

A. The items that were taken were more-or-less expensive type jewelry items.

Q And, how was the material taken from the Nason residence?

A. My investigation revealed that the property was removed with a pillowcase that came from inside the Nason home.

Q Had you developed any information with respect to vehicles being in the vicinity of the Nason home around the time of the break-in?

A. Yes, sir, we did.

Q What information were you given at that time?

A. The information was that a van type vehicle had been observed in the area of the crime scene.

Q Were you informed as to what color the van was?

A. Yes, sir; it was a pea green type van.

Q To the best of your knowledge, at that time had Mr. Gibeault owned or possessed a van?

A. Yes, sir, he did.

Q What color was the van?

A. It was a pea green van.

Q Were you familiar with Mr. Murray at this point in time?

A. Yes.

Q What did you know about his background in terms of criminal involvement with criminal justice?

A. I was aware of the fact Mr. Murray had been arrested several times. I had arrested him myself on a couple of occasions, and he is known to me as a dangerous person.

Q How about Mr. Gibeault, were you aware of him having contact with the law?

A. Yes, sir. Mr. Gibeault, I was aware that he had been arrested for an armed robbery in Rutland County.

Q Prior to January 21st and after the Mason break-in, which you investigated, did you have occasion during that period of time to speak with Mr. Murray or Mr. Gibeault?

A. Yes, I talked with Mr. Gibeault on a couple occasions and I talked with Mr. Murray on one occasion.

Q What was the general subject which you were speaking about at that time?

A. I questioned Gibeault about some of the area crimes that had been taking place.

Q What information, if any, did they provide you with?

A. At that time, they provided no information.

Q Directing your attention to January 21st, around 8:30 in the evening, were you on duty that day?

A. Yes, I was.

Q Did you have occasion to see a van go by state police headquarters in Middlebury?

A. Yes.

Q Would you describe for us what you were doing at that time?

A. I was standing outside the office talking with a person whom I do business with from time-to-time, and the Gibeault van was going past the office on Route 7.

Q Did you recognize it as the Gibeault van, or find out afterwards it was?

A. Yes, sir, I knew the van.

Q What occurred as the van went by where you were located?

A. The van had a faulty muffler and as it passed our state police office, the engine was revied up a couple times, and I took this to be more-or-less an harrassment sort of gesture on the part of whoever was operating the van.

Q Was the muffler on the road when the engine was revied up?

A. Yes, sir, it was.

Q What did you observe after the van went by?

A. I got into my cruiser and proceeded to pursue the vehicle south on Route 7.

- Q What was your purpose, initially, in pursuing the vehicle?
- A. It was to make it stop for defective equipment.
- Q Approximately how far did you follow the vehicle?
- A. I'd say, approximately half a mile.
- Q And, did you observe anything else as you went along during that half mile when you followed the van?
- A. In the half mile I observed the operation. I believe the vehicle went slightly left at center at one point.
- Q What, if anything, was this indicative of to you?
- A. Putting the harrassment gesture and the vehicle going slightly left of center, I thought there was a possibility it may be a D.W.I. operation.
- Q What did you do after observing the vehicle for that approximate half mile?
- A. Then I stopped it.
- Q Where was your cruiser stopped in relation to the van?
- A. I stopped behind the van about ten feet behind it.
- Q What did you do in terms of approaching the van? How did you approach the van?
- A. Approaching the van was done in a very routine manner. I walked up to the back of the van, shined my light into the rear windows and then proceeded with the checking of the vehicle operator.
- Q What was your purpose in shining the light in the rear windows of the van?

A. It is a basic safety precaution practiced by all troopers.

Q What, if anything, did you observe when you flashed the light inside?

A. At that time, I noticed there was three pillowcases which contained very expensive looking glassware, and I saw one silver plated item.

Q How was it placed in the van in terms of neatly stacked or dumped out? How would you describe it?

A. It looked to me like it had been misued; possibly thrown into the back of the van.

Q What were these items contained in?

A. They were in pillowcases.

Q As you approached the van, who did you observe to be in the van?

A. The operator was Joseph Gibeault and the passenger in the front right was Steven John Murray.

Q Do you see either or both of those individuals in the courtroom here today?

A. Yes, sir, I see Joseph Gibeault and Steven John Murray.

Q Would you describe where each is seated please?

A. Mr. Gibeault is wearing a white shirt with pink trim and seated to the left of Mr. Hirst, and Steven Murray is wearing a jacket, seated to the right of Mr. Sessions.

MR. O'NEILL. Your Honor, we ask the record reflect the identity of Mr. Gibeault and Mr. Murray.

THE COURT. Yes, it may.

Q (By Mr. O'Neill) Which side did you approach the van on in terms of the passenger's or driver's side?

A. On the driver's side.

Q What did you do when you got to the driver's side?

A. At that time I requested the operator's license and registration of the vehicle.

Q And, after receiving the operator's license and registration, what did you do following that?

A. At that point, I detected the odor of intoxicants and requested that Mr. Gibeault get out of the van and come back to my cruiser.

Q Did you have occasion back at the cruiser to talk with respect to the consumption of alcoholic beverages?

A. Yes.

Q Explain the substance of that discussion please.

A. Again, it was a very basic procedure which we follow, the request for somebody to take a D.W.I. breath test.

Q Did you discuss the procedure you would go through?

A. Yes, sir, I did.

Q Did there come a time when you advised him of what his rights were under the Miranda decision, as it is known?

A. Yes, sir, I did.

- Q How extensive was your discussion on that subject?
- A. His rights were completely explained to him, and also to Murray at the same time.
- Q First of all, with respect to Mr. Gibeault, what did he indicate in terms of his rights in terms of understanding and his willingness to answer questions?
- A. He was willing to answer questions at that time.
- Q How about Mr. Murray, what was his reaction?
- A. Mr. Murray indicated that he did understand his rights but he was not willing to answer questions.
- Q When you explained the rights to Mr. Gibeault, what were you explaining the rights to him in relation to what you were asking him about? What did you tell him you were going to ask him about while explaining his rights?
- A. The rights were explained after I developed the information in my own mind about the possession of the glassware and the rights were more-or-less pertaining to the criminal aspects rather than the D.W.I.
- Q Was Mr. Gibeault made aware of the fact you were giving him his rights in conjunction with the material found in the van?
- A. Yes, sir, I am sure he was.
- Q What did Mr. Gibeault give you for his explanation for the material in the van?
- A. He told me his father had moved out of his house in

Cornwall and had given him some junk which he was to take to the dump in the near future.

Q From your view of the material which you saw in the back of the van, in your experience how would you describe it as the sort of thing people would take to the dump?

A. If it was mine, it wouldn't go to the dump.

Q Did there come a point in time when you called for some assistance to come to where your location was?

A. Yes, sir.

Q Who was it that you called?

A. Patrol Officer Coons of the Middlebury Police Department.

Q How long was it approximately before he arrived there?

A. I'd say, approximately two minutes.

Q Did there come a point in time following this when you went back to state police headquarters in Middlebury?

A. Yes.

Q Before going back, did you give any explanation to Mr. Gibeault your reason for going back there?

A. Yes, sir, I explained to him he was to be processed for D.W.I. and also I explained to him we were going to check the origin and check his story about the glassware in the back of his van, and if it turned out he was telling the truth, he would be released.

Q Did there come a point in time when you looked into the van,

opened up the door and looked inside?

A. Yes, sir.

Q Did you ask Mr. Gibeault whether he would allow you to look inside the van?

A. Yes, sir, I did.

Q What was his response?

A. His response was it was all right to look into the van.

Q Did there come a point in time when you opened up one of the doors?

A. Yes, sir.

Q What was Mr. Gibeault's response at that time?

A. At that time, he made a very vulgar remark as to my opening the van without a search warrant.

Q What did you do after opening the door of the van?

A. I more closely examined the glassware contained in the three pillowcases.

Q What were you able to observe about the glassware?

A. That the glassware was, in fact, very expensive looking property that just naturally wasn't found in the possession of a person such as Joseph and Steve Murray.

Q Now, did you also explain to Mr. Murray he was being detained?

A. Yes, I did.

Q What was the explanation you gave him in that connection?

A. I told him he was being detained due to the fact he was suspected in some area crimes in which this type of property was stolen. That as soon as it could be verified as to where this glassware came from, he would also be released.

Q Did you discuss with Mr. Gibeault taking the van back to state police headquarters?

A. Yes, I did.

Q What was his response to that?

A. He agreed to have the vehicle taken back to the state police office.

Q Did there come a time when you made a search of the passenger, a pat down search of Mr. Murray?

A. Yes, there was.

Q When did this take place in terms of the chronology we are talking about?

A. When I advised Mr. Murray as to why he was being detained, again for safety purposes I frisked him for weapons.

Q During that frisk, did you discover anything?

A. Yes, I did.

Q First of all, how was it? Did you discover it in terms of pat down? How did you feel and what did you observe?

A. Mr. Murray, at that time, was wearing a heavy overcoat and during this pat down I felt something hard in the

approximately twenty minutes.

Q Now I think you also indicated you made a phone call to Mr. Gibeault's father. What information did you receive in that connection?

A. That his father had not given him any such property as was found in his van.

Q Did his father indicate he had given him anything at all?

A. He indicated he might have given him an old stove, or something, when he moved out of the house.

Q Did there come a time you conducted an inventory of the van?

A. Yes, sir.

Q What did you find in terms of items within those three pillowcases in that connection?

A. There were silver plated items, vases and dishes, and there was a mixture of things that could possibly have come from camps.

Q Steping back for a moment, when you first looked into the van back on Route 7 with your flashlight, did you have any idea what you saw in the van related in any manner to any past burglaries that you were aware of?

A. Yes, it related in two ways; one was from the information that I had gotten in the past from this informant who advised they were in the possession of some very expensive glassware and also the M.O. of transporting or carrying

this type of property in pillowcases.

Q What did you do after taking the items out of the truck?

A. They were taken into our conference room of our office in Middlebury and spread out on the table where we could more closely examine them.

Q Now in this connection did you find a wedding bell of one sort?

A. Yes, sir, we did.

Q Had you had any previous experience or previous knowledge of that particular wedding bell?

A. Yes, sir.

Q Describe that please, or how you came in contact with that information?

A. A wedding bell which perfectly matched the description of the one found in Gibeault's van had been stolen from the Nason home.

Q Did you have a photograph of any type of that wedding bell?

A. Yes, the owner of the wedding bell had furnished me with a photograph of it prior to stopping the van that night.

Q And, were you able to match the wedding bell you held up with the photograph?

A. Yes, it did.

Q After making this identification, what did you do with

only time he objected is when I physically opened the door of the van in order to have a better look at what I was seeing through the window.

Q Do you recall what he said to try to stop you from looking through the van?

A. Yes, sir, I do.

Q What did he say?

A. He said, "Have you got a fucking search warrant".

Q However, had you opened the door of the van when he said that?

A. I'd say, I couldn't say for sure.

Q But you had probably just begun to open the door?

A. The door was open.

Q Had you looked in the bags by that time?

A. No, I hadn't looked in them at that point.

Q Do you recall what you said to Mr. Gibeault when he said, "Don't search the vehicle"?

A. I responded with the answer that I didn't think I needed a search warrant at that time.

Q Now, you had no search warrant at that time?

A. No, sir, we didn't.

Q You then took the van down to the station house, would that be accurate, soon after that?

A. Yes, that is right.

Q When you arrived at the station house, was it your thought

that you would search the van immediately?

A. No, the van wasn't searched immediately; the thought was to verify with his father, first.

Q So you went down to the station to verify the story, is that accurate?

A. That is right.

Q And let's suppose that the story was verified, would you then have released Mr. Gibeault and released Mr. Murray without searching the van?

A. I am not sure what I would have done at that point.

Q Is it possible you would have released them and released the van? Would that be accurate?

A. I don't think I would have released them without first contacting the state's attorney and attempting to secure a search warrant. I don't think I would have.

Q Before you actually went into that van and seized the property, you felt you had to verify the story first, is that right?

A. I wanted to give them this opportunity to verify it; it is possible.

Q And then when he did not verify the story, you felt you had enough to search it at that time?

A. When I found he had lied, on top of all the other probable causes, that at that point it should be searched.

Q You felt at that precise moment you had enough to go on

asked referred only to something that occurred at the later time. I don't think I asked any questions on my cross examination referring to why he stopped them. I think the United States Attorney is going beyond the scope of his redirect examination.

THE COURT. We'll take the answer.

A. I believe I did commit myself to the starting of the searching of the van at that time.

Q (By Mr. O'Neill) You subsequently took the van back to the state police barracks, or the van went back there?

A. Yes, that is right.

Q Why didn't you get a search warrant that evening to search the van?

A. That was for a couple of different reasons, the first being that as I stated, I had committed myself to the search of the vehicle at the scene without a search warrant by opening the doors and examining the property, and once back at the office, I acted on the probable cause that I had developed from the scene and a continuation of that search and also at that hour of night, it is very time consuming and difficult to obtain a search warrant.

Q Without the search warrant, would you have an opportunity to examine the van and then release it if you felt there was nothing improper?

A. Yes, sir.

Q Did you consider you had begun a search of the van there on the highway?

A. Yes, I did.

Q When the van was taken back to state police headquarters and subsequently searched there, did you consider that a new search or a continuation of the old one?

A. I thought of it as a continuation of the search began on the highway.

MR. O'NEILL. That is all I have at this time, your Honor.

MR. SESSIONS. There has been new testimony here since this morning. Could I have an opportunity to ask a couple of questions?

THE COURT. Certainly.

RECROSS EXAMINATION

Q (By Mr. Sessions) Now, Trooper LeClair, you testified the second search was a continuation of the first search, is that correct? Was that your feeling at the time?

A. I would say so, yes.

Q After the first search, you decided to take the van down to the police station, is that correct?

A. Yes, that is correct.

Q And, at that time, you wanted to confirm the story given to you by Joseph Gibeault?

A. I was giving him that opportunity, yes.

- Q Now, directing your attention to the bell that was in the automobile, how long had that been in the car?
- A. Couple of weeks.
- Q Or, at least, had it been in the car since the time of the Nason break-in?
- A. Yes, it had.
- Q If that was a month, it had been in there a month?
- A. Yes, it had.
- Q Did you consider that bell had any particular monetary value, or value of this sort?
- A. No.
- Q Would it be fair to say you treated it as a trinket at that point?
- A. I had forgotten it was in there.
- Q You didn't consider it to be particularly valuable?
- A. No.
- Q That had been left in your car over the course of the month, or whatever it was, since the Nason break?
- A. Yes.
- Q Mr. Murray hadn't asked you anything about it, I take it?
- A. No.
- Q This was your van you were riding in that night, is that correct?
- A. No, sir,
- Q Whose van was it?

A. Registered in my father's name.

Q Would it be accurate to state you were the one that used it all the time?

A. Yes.

Q For all practical purposes, other than the title, you were the owner?

A. Yes.

Q I take it, Mr. Murray had no ownership in that van?

A. No, sir.

MR. O'NEILL. I believe that is all I have at this time, your Honor.

THE COURT. Anything further?

MR. HIRST. Nothing further.

MR. SESSIONS. Nothing further.

THE COURT. All right, Mr. Gibeault, you may step down. Any further evidence to be presented by the defendants in connection with the motion to suppress?

MR. SESSIONS. No, your Honor.

THE COURT. Counsel wish to argue the motion to suppress, or satisfied with their memoranda which have been filed? I am not sure the Government filed any.

MR. O'NEILL. In view of the fact we have not filed a memorandum, we would like to argue since the memorandum doesn't do much for us at this point. I have not filed one because of the view it is difficult beforehand

